



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------|-------------------------------|------------------------|
| 10/735,539 | 12/12/2003 | Bernard Charles Sekula | F6182(V) | 2723 |
| 201 7590 04/10/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100 | | | EXAMINER MAHAFKEY, KELLY J | |
| | | | ART UNIT 1761 | PAPER NUMBER |
| | | | MAIL DATE 04/10/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|---|-----------------|-------------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) | |
| | 10/735,539 | SEKULA, BERNARD CHARLES | |
| | Examiner | Art Unit | |
| | Kelly Mahafkey | 1761 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-9, 11, 14 and 15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Cont. 3: The proposed amendments filed March 23, 2007 add the limitations of previously presented, dependant claim 9 into independent claims 1 and 11. As claim 9 was dependant upon claim 1 and not upon claim 11, the proposed amendments (i.e. the combination of the limitations of claims 9 and 11) raise new issues that would require further search and/or consideration as the combined limitations were not considered previously as whole. Furthermore, it is noted that claims 2 and 9 were both dependant upon claim 1; that claims 1 and 3-9 were rejected over a combination of references; and that claims 1, 2, 4, and 5 were rejected over a different combination of references. Thus, the combination of the limitations of claims 1, 2, and 9 would additionally raise new issues which would require further search and/or consideration as the combined limitations were not considered previously as a whole.

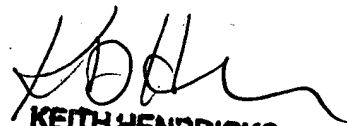
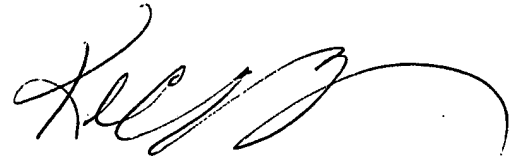
The proposed amendments, filed March 23, 2007 will not be entered.

Cont 11. Applicant's comments filed March 23, 2007 have been considered but are not deemed persuasive.

Applicant argues that the finality of the office action mailed February 8, 2007 should be withdrawn because a new rejection was presented. However, it is noted that the new rejection was in responses to applicant's amendments, in which limitations from a dependant claim was moved into a claim from which it was not dependant upon, thus creating the need for new grounds of rejection. Applicant's argument is not persuasive and the finality of the office action mailed February 8, 2007 remains.

Applicant argues that the references of record do not teach of a honey composition with the same properties as recited in claims 14 and 15. This is not convincing as the honey composition as taught by the references has a similar composition as instantly claimed, and thus, as stated in the previous office action, one of ordinary skill in the art would expect the two compositions to possess similar properties, absent any convincing evidence and/or arguments to the contrary.

The rejections are maintained for the reasons of record, as set forth in the Final Office action.



KEITH HENDRICKS
PRIMARY EXAMINER